

2011 Montana Legislature

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SENATE BILL NO. 117

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A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING CERTAIN LOCAL GOVERNMENTS, CERTAIN AND SPECIAL PURPOSE DISTRICTS, AND SCHOOL DISTRICTS TO DEMAND COORDINATION FROM THE FEDERAL GOVERNMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING A PROCEDURE FOR DEMANDING COUNTY GOVERNMENTS AND SPECIAL DISTRICTS TO DEMAND COORDINATION; PROVIDING A PROCEDURE FOR A PERSON TO SERVE A LOCAL GOVERNING BODY; OR SPECIAL DISTRICT BOARD, OR SCHOOL DISTRICT BOARD OF TRUSTEES WITH A WRITTEN COMPLAINT IF THE ENTITY FAILS TO COMPLY WITH CERTAIN REQUIREMENTS; REQUIRING THAT PUBLIC HEARINGS BE HELD UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 7-1-114, 7-1-2103, 7-1-4124, AND 7-11-1021, AND 20-3-324, MCA.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Demand for coordination required process.~~ (1) If a city or town has a plan or policy that is less restrictive than a federal plan or policy, the governing body of the city or town ^{may} demand by any lawful means that the federal government coordinate

~~with the city or town before the federal government implements, enforces, expands, or extends the federal plan or policy within the city's or town's jurisdictional boundaries.~~

~~—(2) If the governing body of a city or town demands coordination as provided in subsection (1) and the federal government fails to coordinate in good faith with the city or town, the governing body shall:~~

~~—(a) hold public hearings to discuss the plan or policy and consider any information that has been provided by the federal government; and~~

~~—(b) determine whether or not to litigate to enforce the city's or town's coordination rights.~~

~~—(3) (a) If the governing body of the city or town fails to comply with the provisions of this section, a person who resides or does business in the state may object by serving each member of the governing body with a written complaint.~~

~~—(b) If, within 60 days of the date that the person served the complaint, the governing body fails to act on the complaint by demanding coordination as provided in subsection (1) or by complying with the other provisions of this section and the failure by the governing body causes injury to the person, the person may submit a written demand for response. The demand for response must include the plan or policy with which the governing body has failed to demand coordination.~~

~~—(c) Within 30 days of receipt of the demand for response, the governing body shall hold a hearing to present information on its failure to comply with the provisions of this section.~~

~~—(4) For the purposes of this section, the following definitions apply:~~

~~—(a) "Coordination" means a process by which the federal government seeks in good faith to reach consistency between a federal plan or policy and a city or town plan or policy when a city or town plan or policy is less restrictive than that of the federal government.~~

~~—(b) "Less restrictive" means a city or town plan or policy imposes or would impose less of a burden on the exercise of rights, privileges, or immunities enjoyed by individuals, organizations, and businesses within the city's or town's jurisdictional boundaries.~~

~~—(c) "Plan" means a written document that contains policies, expectations, or guidelines relating to an action, including but not limited to a resolution or letter.~~

~~—(d) "Policy" means a statement of principle or objective contained in a resolution, plan, or letter written to address a specific issue.~~

NEW SECTION. Section 1. Demand for coordination required-- process. (1) If a county has a plan or policy that is less restrictive than a federal plan or policy, the county governing body ~~shall~~ **MAY** demand by any lawful means that the federal government coordinate with the county before the federal government implements, enforces, expands, or extends the federal plan or policy within the county's jurisdictional boundaries.

(2) If the county governing body demands coordination as provided in subsection (1) and the federal government fails to coordinate in good faith with the county, the governing body shall:

(a) hold public hearings to discuss the plan or policy and consider any information that has been provided by the federal government; and

(b) determine whether or not to litigate to enforce the county's coordination rights.

(3) (a) If the county governing body ~~fails to comply with the provisions of this section~~ **DOES NOT DEMAND COORDINATION AS PROVIDED IN THIS SUBSECTION,** a ~~person who resides or does business in the state~~ **RESIDENT ELECTOR OF THE COUNTY** may object by serving each member of the governing body with a written complaint.

(b) If, within 60 days of the date that the person served the complaint, the governing body fails to act on the complaint by demanding coordination as provided in subsection (1) or by complying with the other provisions of this section and the failure by the governing body causes

injury to the person, the person may submit a ~~written demand for response~~. The ~~demand for response must include the plan or policy with which the governing body has failed to demand coordination~~ PETITION SIGNED BY AT LEAST 3% OF THE RESIDENT ELECTORS OF THE COUNTY DEMANDING A RESPONSE. THE PETITION MUST IDENTIFY THE APPLICABLE FEDERAL PLAN OR POLICY AND THE APPLICABLE COUNTY PLAN OR POLICY DESCRIBED IN SUBSECTION (1) AND A STATEMENT OF HOW THE COUNTY'S FAILURE TO COORDINATE DECISION TO NOT DEMAND COORDINATION OR FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION HAS INJURED THE PERSON.

(c) Within 30 days of receipt of the ~~demand for response~~ PETITION, the governing body shall hold a hearing to present information on its DECISION TO NOT DEMAND COORDINATION OR failure to comply with the provisions of this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Coordination" means a process by which the federal government seeks in good faith to reach consistency between a federal plan or policy and a county plan or policy when a county plan or policy is less restrictive than that of the federal government.

(b) "Less restrictive" means a county plan or policy imposes or would impose less of a burden on the exercise of rights, privileges, or immunities enjoyed by individuals, organizations, and businesses within the county's jurisdictional boundaries.

(c) "Plan" means a written document that contains policies, expectations, or guidelines relating to an action, including but not limited to a resolution or letter.

(d) "Policy" means a statement of principle or objective contained in a resolution, plan, or letter written to address a specific issue.

NEW SECTION. Section 2. Demand for coordination required--- process. (1) If a special district has a plan or policy that is less restrictive than a federal plan or policy, the governing

body or the district board ~~shall~~ MAY demand by any lawful means that the federal government coordinate with the district before the federal government implements, enforces, expands, or extends the federal plan or policy within the district's jurisdictional boundaries.

(2) If the governing body or district board demands coordination as provided in subsection (1) and the federal government fails to coordinate in good faith with the district, the governing body or board shall:

(a) hold public hearings to discuss the plan or policy and consider any information that has been provided by the federal government; and

(b) determine whether or not to litigate to enforce the district's coordination rights.

(3) (a) If the governing body or district board ~~fails to comply with the provisions of this section~~ DOES NOT DEMAND COORDINATION AS PROVIDED IN THIS SUBSECTION, a ~~person who resides or does business in the state~~ RESIDENT ELECTOR OF THE DISTRICT may object by serving each member of the governing body or district board with a written complaint.

(b) If, within 60 days of the date that the person served the complaint, the governing body or district board fails to act on the complaint by demanding coordination as provided in subsection (1) or by complying with the other provisions of this section and the failure by the governing body or district board causes injury to the person, the person may submit a ~~written demand for response. The demand for response must include the plan or policy with which the governing body or district board has failed to demand coordination~~ PETITION SIGNED BY AT LEAST 3% OF THE RESIDENT ELECTORS OF THE DISTRICT DEMANDING A RESPONSE. THE PETITION MUST IDENTIFY THE APPLICABLE FEDERAL PLAN OR POLICY AND THE APPLICABLE DISTRICT PLAN OR POLICY DESCRIBED IN SUBSECTION (1) AND A STATEMENT OF HOW THE GOVERNING BODY'S OR DISTRICT BOARD'S FAILURE TO COORDINATE DECISION TO NOT DEMAND COORDINATION OR FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION HAS INJURED THE PERSON.

(c) Within 30 days of receipt of the ~~demand for response~~ PETITION, the governing body or district board shall hold a hearing to present information on its DECISION TO NOT DEMAND COORDINATION OR failure to comply with the provisions of this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Coordination" means a process by which the federal government seeks in good faith to reach consistency between a federal plan or policy and a district plan or policy when a district plan or policy is less restrictive than that of the federal government.

(b) "Less restrictive" means a district plan or policy imposes or would impose less of a burden on the exercise of rights, privileges, or immunities enjoyed by individuals, organizations, and businesses within the district's jurisdictional boundaries.

(c) "Plan" means a written document that contains policies, expectations, or guidelines relating to an action, including but not limited to a resolution or letter.

(d) "Policy" means a statement of principle or objective contained in a resolution, plan, or letter written to address a specific issue.

NEW SECTION. Section 3. State agencies to coordinate. (1) If a county has a plan or policy that is less restrictive than a state plan or policy, the state agency responsible for implementing the plan or policy shall coordinate with the county governing body before implementing the plan or policy within a county's jurisdictional boundaries.

(2) For purposes of this section:

(a) "coordinate means to seek in good faith to reach consistency between state and county plans or policies;

(b) "less restrictive", "plan" and "policy" have the meaning as provided in [section 1].

~~NEW SECTION. Section 4. Demand for coordination required -- process.~~ (1) If a school district has a plan or policy that is less restrictive than a federal plan or policy, the district board

~~of trustees shall demand by any lawful means that the federal government coordinate with the district before the federal government implements, enforces, expands, or extends the federal plan or policy within the district's jurisdictional boundaries.~~

~~—(2) If the district board of trustees demands coordination as provided in subsection (1) and the federal government fails to coordinate in good faith with the district, the board shall:~~

~~—(a) hold public hearings to discuss the plan or policy and consider any information that has been provided by the federal government; and~~

~~—(b) determine whether or not to litigate to enforce the district's coordination rights.~~

~~—(3) (a) If the district board of trustees fails to comply with the provisions of this section, a person who resides or does business in the state may object by serving each member of the district board with a written complaint.~~

~~—(b) If, within 60 days of the date that the person served the complaint, the district board of trustees fails to act on the complaint by demanding coordination as provided in subsection (1) or by complying with the other provisions of this section and the failure by the district board causes injury to the person, the person may submit a written demand for response. The demand for response must include the plan or policy with which the district board has failed to demand coordination.~~

~~—(c) Within 30 days of receipt of the demand for response, the district board shall hold a hearing to present information on its failure to comply with the provisions of this section.~~

~~—(4) For the purposes of this section, the following definitions apply:~~

~~—(a) "Coordination" means a process by which the federal government seeks in good faith to reach consistency between a federal plan or policy and a school district plan or policy when a school district plan or policy is less restrictive than that of the federal government.~~

~~—(b) "Less restrictive" means a school district plan or policy imposes or would impose less of a burden on the exercise of rights, privileges, or immunities enjoyed by individuals, organizations, and businesses within the district's jurisdictional boundaries.~~

~~—(c) "Plan" means a written document that contains policies, expectations, or guidelines relating to an action, including but not limited to a resolution or letter.~~

~~—(d) "Policy" means a statement of principle or objective contained in a resolution, plan, or letter written to address a specific issue.~~

~~—Section 3. Section 7-1-114, MCA, is amended to read:~~

~~—"7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:~~

~~—(a) all state laws providing for the incorporation or disincorporation of cities and towns, for the annexation, disannexation, or exclusion of territory from a city or town, for the creation, abandonment, or boundary alteration of counties, and for city-county consolidation;~~

~~—(b) Title 7, chapter 3, part 1;~~

~~—(c) all laws establishing legislative procedures or requirements for units of local government;~~

~~—(d) all laws regulating the election of local officials;~~

~~—(e) all laws that require or regulate planning or zoning;~~

~~—(f) any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;~~

~~—(g) except as provided in subsection (3), any law regulating the budget, finance, or borrowing procedures and powers of local governments;~~

~~(h) Title 70, chapters 30 and 31; and~~

~~(i) requirements for demanding federal coordination pursuant to [sections 1 and 2] [SECTION 1].~~

~~(2) These provisions are a prohibition on the self government unit acting other than as provided.~~

~~(3) (a) Notwithstanding the provisions of subsection (1)(g) and except as provided in subsection (3)(b), self governing local government units are not subject to the mill levy limits established by state law.~~

~~(b) The provisions of 15-10-420 apply to self governing local government units."~~

Section 4. Section 7-1-2103, MCA, is amended to read:

"7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make contracts and purchase and hold personal property that may be necessary to the exercise of its powers;

(4) make orders for the disposition or use of its property that the interests of its inhabitants require;

(5) subject to 15-10-420, levy and collect taxes for public or governmental purposes, as described in 7-6-2527, under its exclusive jurisdiction unless prohibited by law; and

(6) demand that the federal government coordinate certain activities with the county as provided in [section 2 1]."

~~Section 7. Section 7-1-4124, MCA, is amended to read:~~

~~"7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:~~

~~(1) enact ordinances and resolutions;~~

~~(2) sue and be sued;~~

~~(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;~~

~~(4) contract with persons, corporations, or any other governmental entity;~~

~~(5) pay debts and expenses;~~

~~(6) borrow money;~~

~~(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;~~

~~(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;~~

~~(9) make grants and loans of money, property, and services for public purposes;~~

~~(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;~~

~~(11) hire, direct, and discharge employees and appoint and remove members of boards;~~

~~(12) ratify any action of the municipality or its officers or employees that could have been approved in advance;~~

- ~~—(13) have a corporate seal and flag;~~
- ~~—(14) acquire by eminent domain, as provided in Title 70, chapter 30, any interest in property for a public use authorized by law;~~
- ~~—(15) initiate a civil action to restrain or enjoin violation of an ordinance;~~
- ~~—(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;~~
- ~~—(17) conduct a census;~~
- ~~—(18) conduct inventories of public property and preparatory studies;~~
- ~~—(19) condemn and demolish hazardous structures;~~
- ~~—(20) purchase insurance and establish self insurance plans;~~
- ~~—(21) impound animals and other private property creating a nuisance or obstructing a street or highway;~~
- ~~—(22) establish quarantines;~~
- ~~—(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in 7-1-4150; and~~
- ~~—(24) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions; and~~
- ~~—(25) demand that the federal government coordinate certain activities with the municipality as provided in [section 1]."~~

Section 5. Section 7-11-1021, MCA, is amended to read:

"7-11-1021. Governance -- powers and duties. (1) A special district must be administered and operated either by the governing body or by a separate elected or appointed board as determined by the governing body.

(2) (a) If the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, and specific powers and duties granted to the board and those specifically withheld must be stated.

(b) The governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body.

(c) The governing body has ultimate authority under this subsection (2).

(3) The entity chosen to administer the special district, as provided in subsection (1), may:

(a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district;

(b) administer the budget of the special district;

(c) employ personnel;

(d) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program;

(e) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program;

(f) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district;

(g) construct and maintain facilities and buildings necessary to accomplish the purposes of the special district;

(h) provide grants to private, nonprofit entities as part of implementing an effective program;

(i) adopt a seal and alter it at the entity's pleasure;

(j) administer local ordinances as appropriate;

(k) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and

(l) borrow money by the issuance of:

(i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, part 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or

(ii) revenue bonds for the lease, purchase, and maintenance of land, facilities, and buildings and the funding of projects in the manner and subject to the appropriate provisions of Title 7, chapter 7, part 25 or 44.

(4) The entity chosen to administer the special district shall submit annual budget and work plans to the governing body for review and approval.

(5) The right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

(6) The entity chosen to administer the special district shall may demand that the federal government coordinate certain activities with the special district as provided in [section 3 2]."

~~Section 9. Section 20-3-324, MCA, is amended to read:~~

~~— "20 3 324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:~~

~~— (1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;~~

~~— (2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;~~

~~— (3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;~~

~~— (4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;~~

~~— (5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;~~

~~— (6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;~~

~~— (7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;~~

~~— (8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;~~

~~— (9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;~~

~~—(10) establish the ANB, BASE budget levy, over BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;~~

~~—(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;~~

~~—(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;~~

~~—(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;~~

~~—(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;~~

~~—(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;~~

~~—(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;~~

~~—(17) set the length of the school term, school day, and school week in accordance with 20-1-302;~~

~~—(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;~~

~~—(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;~~

~~—(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;~~

~~—(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;~~

~~—(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first class school district may share the responsibility for visiting each school in the district;~~

~~—(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;~~

~~—(24) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.~~

~~—(25) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;~~

~~—(26) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;~~

~~—(27) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;~~

~~—(28) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;~~

~~—(29) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and~~

~~—(30) demand that the federal government coordinate certain activities with the school district as provided in [section 4]; and~~

~~—(30)(31) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."~~

~~—NEW SECTION. Section 10. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions of Title 7, chapter 1, part 41, apply to [section 1].~~

~~—(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 1, part 21, and the provisions of Title 7, chapter 1, part 21, apply to [section 2].~~

~~—(3) [Section 3] is intended to be codified as an integral part of Title 7, chapter 11, part 10, and the provisions of Title 7, chapter 11, part 10, apply to [section 3].~~

~~—(4) [Section 4] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 4].~~

NEW SECTION. SECTION 6. CODIFICATION INSTRUCTION. (1) [SECTION 1] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 7, CHAPTER 1, PART 21, AND THE PROVISIONS OF TITLE 7, CHAPTER 1, PART 21, APPLY TO [SECTION 1].

(2) [SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 7, CHAPTER 11, PART 10, AND THE PROVISIONS OF TITLE 7, CHAPTER 11, PART 10, APPLY TO [SECTION 2]. (3) [SECTION 3] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 2, CHAPTER 11, AND THE PROVISIONS OF TITLE 2, CHAPTER 11 APPLY TO [SECTION 3]

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